DORA BT. HJ. ADENAN

v.

DELTA FINANCE BHD.

HIGH COURT SABAH & SARAWAK, KUCHING
PUAN ELIZABETH M. CHAPMAN JC
[BANKRUPTCY NO. KG. 291 OF 1993 (III)]
23 SEPTEMBER 1994

BANKRUPTCY: *Service of bankruptcy notice by individual providing delivery service - Whether proper - Whether process server "person in their employment" - Bankruptcy Rules 1969 r. 109.*

WORDS & PHRASES: *"Person in their employment" - Bankruptcy Rules 1969 r. 109.*

A bankruptcy notice was served by one Gadion ak. Laga, an individual who provides delivery services including delivery of Court processes, on the debtor for Messrs Loke, King & Co. Advocates in return for a fee. The issue that arose in determining whether the notice was properly served was whether Gadion ak. Laga was "a person in their employment" within the meaning of r. 109 Bankruptcy Rules 1969.

Held:
The intended meaning of "a person in their employment" in r. 109 of the Bankruptcy Rules would mean a person in the permanent employment of the creditor or his solicitor, and not one who receives a commission on a case to case basis. Therefore, service by a private individual who provides delivery services and retained by the advocate firm for this purpose is not a proper service.

[Petition struck out; receiving order and adjudicating order disallowed].

Case referred to:
Re Lancaster, ex parte Lancaster [1876] 3 Ch D 498 ***(dist)***

Legislation referred to:
Bankruptcy Rules 1969, rr. 97, 109
Bankruptcy Rules 1870 (UK), rr. 61

For the petitioning creditor - Wong Siong Tung
For the judgment debtor - Absent
For the official assignee - Kho Fui Long

JUDGMENT

Elizabeth M. Chapman JC:

The issue before this Court is whether service of the bankruptcy notice dated 20 July 1993 in these proceedings is proper. The bankruptcy notice was served by Gadion ak. Laga who has been carrying on business under the name and style of Ken's Express Services. The nature of his business involved providing delivery services which include, amongst other things, delivering Court process to persons directed by his clients in return for a fee.

In this instant case, he was retained by Messrs Loke, King & Co. Advocates to effect personal service of the bankruptcy notice on the debtor and the dispute here is whether Gadion ak. Laga was in their employment within the meaning of Rule 109 of the Bankruptcy Rules. Rule 109 reads as follows:

> A creditor's pettition shall be personally served and service shall be effected by an officer of the Court or by the creditor or his solicitor or a person in their employment by delivering a sealed copy of the petition to the debtor.

It is prescribed in r. 97 that a bankruptcy notice shall be served and service thereof shall be proved in like manner as is prescribed for the service of a creditor's petition. It was argued by learned Counsel for the petitioning creditor that if a person was authorised to effect personal service he was in their employ by virtue of r. 109 and that employment meant permanently employed or engagement for any one particular transaction.

In my view, the intended meaning of "a person in their employment" in r. 109 of the Bankruptcy Rules would mean a person in the permanent employment of the creditor or his solicitor, and not one who would receive a commission on a case to case basis as is the case here. The rule must be strictly complied with as I think the object of the rule is to secure that a responsible person shall effect the service and make the affidavit of service.

In *re Lancaster Ex parte Lancaster* [1876] 3 Ch D, 498 referred to by learned Counsel in support of his contention can be distinguished from the present case as in *re Lancaster* the contention was that the service by the clerk of the London solicitor's country agent was not proper service as r. 61 of the Bankruptcy Rules 1870 provides that a debtor's summons or a petition shall be served upon the debtor by an officer or a bailiff of the Court, or by the creditor or his attorney. Bacem CJ at p. 500 said:

> The reasonable construction is that the attorney is to perform this business in the same way that he performs any other business which is entrusted to him by a client. A London solicitor naturally employs a country solicitor as his agent to do business for him in the country, and the country solicitor employs a clerk to act for him.

In the case before this Court a private individual who provides delivery services was retained by the advocate firm to serve the bankruptcy notice, as distinct from the clerk of the advocate firm. This cannot, in my view, be considered proper service within the meaning and intent of r. 109 and accordingly I hold that service in this case is not proper and disallow making an order for receiving order and adjudicating order. Creditor's petition is therefore struck out and deposit ordered to be refunded.